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10  
11 **UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

12 ARCHER WESTERN CONTRACTORS, LLC  
13 A Delaware foreign limited-liability company

14 Plaintiff,

15 v.

16 THE ERECTION COMPANY, INC.,  
A Washington corporation

17 and

18 TRAVELERS CASUALTY AND SURETY  
19 COMPANY OF AMERICA,  
A Connecticut Corporation

20 Defendants.  
21

CASE NO. 2:17-cv-03032-GMN-NJK

**STIPULATION TO STAY and ORDER**

22 Plaintiff, Archer Western Contractors, LLC, (“Archer Western”), and Defendants, The  
23 Erection Company, Inc. (“TEC”), and Travelers Casualty and Surety Company of America  
24 (“Travelers TEC”) <sup>1</sup>, (collectively referred to as the “Parties”), by counsel, hereby stipulate to stay  
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26  
27 <sup>1</sup> Travelers issued payment and performance bonds to both Archer Western and TEC.  
28 Travelers’ bonds related to Archer Western are referred to as “Archer Western Travelers”.  
Travelers’ bonds related to TEC are referred to as “Travelers TEC”.

1 this litigation. This joint stipulation is made for good cause and is not made with any intent to  
2 delay these proceedings. This Stipulation is based upon the information and case law provided  
3 below.

## 4 STIPULATION

### 5 **I. INTRODUCTION**

6 The Parties seek to stay the pending action for two primary reasons:

7 (a) Archer Western filed this lawsuit due to concerns regarding the expiration of the statute  
8 of limitation; and

9 (b) The resolution of a pending dispute between Archer Western and the Federal Aviation  
10 Administration (“FAA”) may resolve this lawsuit and other pending and potential  
11 lawsuits as delineated below.

### 12 **II. STATEMENT OF THE CASE**

13 This litigation is related to and arises from disputes between Archer Western and the FAA  
14 regarding the construction of the new Air Traffic Control Tower and Terminal Radar Approach  
15 Control at McCarran International Airport, Las Vegas, Nevada (“Project”). It also arises from  
16 disputes between Archer Western, its subcontractors, and their subcontractors regarding the  
17 assertions of affirmative claims.

18 Archer Western, as general contractor, entered into a prime contract with the FAA, the  
19 owner, to construct the Project. Archer Western entered into subcontracts with the Gallagher-  
20 Kaiser Corporation (“G-K”) and Fisk Electric Company (“Fisk”), wherein G-K was to perform  
21 certain mechanical and plumbing work for the Project as a subcontractor to Archer Western, and  
22 wherein Fisk was to perform certain electrical work.

23 During the Project, the FAA materially altered the character of Archer Western’s work on  
24 the Project by, among other things, issuing numerous changes and design revisions – including  
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1 changes and design revisions to G-K's mechanical and plumbing work and Fisk's electrical work.  
2 The FAA's changes and design revisions are described in detail in Archer Western's claims  
3 against the FAA (Notices of Contract Dispute), which are included as part of Exhibit A attached  
4 hereto. The FAA's numerous changes and design revisions significantly increased Archer  
5 Western's, G-K's and Fisk's cost of performing their work. Archer Western contends that it also  
6 increased the cost of G-K's and Fisk's subcontractors. TEC and Travelers TEC dispute that  
7 contention and the contention that Archer Western may seek indemnification for claims by any of  
8 G-K's or Fisk's subcontractors.. The FAA's changes and design revisions also impacted Archer  
9 Western's and G-K's ability to perform their work in a timely and cost-effective manner.  
10

11 Additionally, Archer Western alleges that the work of Archer Western, its subcontractors,  
12 and their lower-tiered subcontractors was affected by significant delays to the entire Project caused  
13 by TEC, which had been retained by one of Archer Western's subcontractors to do the steel  
14 erection work on the Project. TEC disputes and denies this allegation. While a previous lawsuit  
15 between Archer Western, TEC, and Travelers TEC was settled and dismissed, the settlement  
16 agreement between the parties exempted claims relating to the Project from G-K and Fisk.<sup>2</sup>  
17 Archer Western and Archer Western Travelers contend that the settlement agreement also  
18 exempted claims from G-K and Fisk's subcontractors. TEC and Travelers TEC dispute that  
19 contention.  
20  
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22 Archer Western asserts that G-K and Fisk Electric, subcontractors to Archer Western, have  
23 asserted claims against Archer Western and Archer Western Travelers. Archer Western also  
24 asserts that subcontractors of G-K have asserted claims against Archer Western and Archer  
25 Western Travelers. TEC and Travelers TEC dispute that these claims are exempted from the  
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28 <sup>2</sup> The dismissed case is The Erection Co., Inc. v. Archer Western Contractors, LLC, et al.  
Case No. 2:12-cv-00612-MMD-MJK.

1 settlement agreement between Archer Western and Archer Western Travelers and TEC and  
2 Travelers TEC.

3 G-K, has filed a legal action against Archer Western and/or Archer Western Travelers, and  
4 this action has been dismissed without prejudice for one primary reason, namely that the pending  
5 action between Archer Western and the FAA will potentially resolve the claims of G-K and of  
6 Fisk. Desert Mechanical and Liberty Duct also filed legal actions against Archer Western and/or  
7 Archer Western Travelers, which have been stayed. TEC and Travelers TEC dispute that they  
8 might have any liability related to those claims and that their actions and/or claims are exempted  
9 from the settlement agreement.  
10

11 As a result of the FAA's changes and design revisions, and in accordance with the dispute  
12 resolution process in the prime contract, Archer Western submitted its claims for additional  
13 compensation (Notices of Contract Dispute) to the Office of Dispute Resolution for Acquisitions  
14 ("ODRA"). (Exhibit A.) That dispute is pending. ODRA is the sole, statutorily designated  
15 tribunal for all contract disputes under the FAA's management system. 14 CFR Part 17.  
16

17 A substantial portion of the pending claims against Archer Western by its subcontractors  
18 relates to claimed delay damages, and, as stated, Archer Western contends that TEC caused  
19 substantial delays on the Project, a contention disputed by TEC. Because of statute of limitation  
20 concerns, Archer Western asserts that it could not wait until its claim against the FAA was  
21 resolved to assert a claim against TEC and Travelers TEC but was forced to file the instant lawsuit.  
22 However, as the ultimate outcome of Archer Western's claim against the FAA will have a  
23 significant effect on this case and the other pending claims and cases, the Parties seek to stay this  
24 action pending the resolution of the ODRA action.  
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### III. LEGAL SUPPORT

#### A. The Legal Standard

The “power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” Landis v. North American. Co., 299 U.S. 248, 254-55 (1936). There is no requirement that “before proceedings in one suit may be stayed to abide the proceedings in another, the parties to the two causes must be shown to be the same and the issues identical.” Id. at 254.

“Where it is proposed that a pending proceeding be stayed, the competing interests which will be affected by the granting or refusal to grant a stay must be weighed. Among these competing interests are the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of simplifying or complicating the issues, proof, and questions of law which could be expected to result from a stay.” CMAX, Inc. v. Hall, 300 F.2d 265, 268 (1962).

“A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case. This rule applies whether the separate proceedings are judicial, administrative, or arbitral in character, and does not require that the issues in such proceedings are necessarily controlling of the action before the court.” Leyva v. Certified Grocers of California, Ltd., 593 F.2d 857, 863-864 (9<sup>th</sup> Cir. 1979).

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1           B. The Present Litigation should be stayed until the dispute between Archer Western and  
2           the FAA is resolved.

3           As stated, this case was filed by Archer Western because of statute of limitation concerns.  
4           The case, however, is significantly related to other pending litigation and claims, all of which arise  
5           out of the same Project, with the main dispute being the one between Archer Western and the FAA  
6           as described in Exhibit “A”. It is likely that the outcome of that dispute will significantly affect the  
7           other pending claims of Archer Western’s subcontractors and sub-subcontractors, and may well  
8           cause this case to be dismissed or be consolidated with one of the other cases. In the meantime,  
9           and because of that likely outcome, the Parties hereto should not be forced to incur significant  
10          attorney’s fees and costs.

11           C. The “Competing Interests of Justice” in the Present Matter Support a Stay of this  
12           Litigation

13           The “competing interests” in the present matter also support a stay of this litigation. See  
14           CMAX, Inc., 300 F.2d 265, 268. In the first instance, no possible damage to the Parties or this  
15           Court will result from the stay, and TEC and Travelers TEC will not be prejudiced by a stay of this  
16           litigation. See Id. A stay of the present litigation would only be temporary and would only remain  
17           in effect until such time that the ODRA proceedings are exhausted. Once the ODRA proceedings  
18           conclude, this litigation can resume, if necessary, and the stay will not result in TEC and Travelers  
19           TEC losing any contractual or legal rights.

20           However, if the present litigation is not stayed, the Parties will be prejudiced and will suffer  
21           “hardship or inequity.” See Id. Litigating the same issues in this Court and ODRA at the same  
22           time would be duplicative and unduly burdensome. If this litigation is not stayed, the Archer  
23           Western will incur unnecessary attorneys’ fees and legal costs in having to litigate the same issues  
24           simultaneously in different jurisdictions, and TEC and Travelers TEC will incur similar fees and  
25           cost.  
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1 Furthermore, if this litigation is not stayed, Archer Western, TEC and Travelers TEC  
2 would be forced to litigate issues related to the claims of other contractors and subcontractors,  
3 whose own actions against Archer Western have been stayed or dismissed. That, in turn, would  
4 potentially result in inconsistent outcomes, duplicative proceedings and discovery, and might not  
5 resolve any of the pending disputes.  
6

7 In fact, this lawsuit, by its very nature, relates to the claims of G-K and Fisk, and indirectly  
8 to the dispute between Archer Western and the FAA. If this case is not stayed, Archer Western will  
9 in all likelihood move to have it consolidated with one of the other pending lawsuits, because of  
10 the assertion of delay damages by one of those plaintiffs. Because those cases are presently stayed,  
11 the ultimate result would be the same.

12 The “orderly course of justice” and the judicial economy of this Court would be enhanced  
13 if this litigation were stayed and the ODRA proceedings were allowed to proceed to determine the  
14 entitlement and measure of Archer Western’s damages resulting from claims by G-K and/or Fisk.  
15 Archer Western and Archer Western Travelers also contend that this lawsuit pertains to claims of  
16 G-K’s and Fisk’s subcontractors. TEC and Travelers TEC dispute that contention and the  
17 contention that Archer Western may seek indemnification for claims by any of G-K’s or Fisk’s  
18 subcontractors. Judicial resources and time would be saved if this litigation is stayed because the  
19 risk of inconsistent findings and judgments would be avoided. Also, if this litigation is stayed,  
20 Archer Western could recover damages against the FAA in the ODRA proceedings for these other  
21 pending claims and, as a result, these claims against Archer Western could be resolved without the  
22 need for this litigation. Even if the ODRA proceedings do not resolve all of the issues between  
23 Archer Western and G-K, the ODRA proceedings will at the very least significantly narrow the  
24 issues. Nevertheless, if this litigation is stayed, there would be no harm to the Parties as the stay  
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1 could be lifted upon the conclusion of the ODRA proceedings, and the Parties would not incur any  
2 fees and cost in the meantime.

3 **IV. CONCLUSION**

4 Based on the above, the Parties respectfully requests that this Court stay this litigation until  
5 the owner related disputes process against the FAA is exhausted.

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7 By agreeing to this Stipulation, TEC and Travelers TEC do not waive and Archer Western  
8 agrees that TEC and Travelers TEC retain any and all defenses which they have to Archer  
9 Western's complaint, and which they could have asserted in a responsive pleading pursuant to the  
10 Federal Rules of Civil Procedure.

11 Dated this 25th day of May, 2018.

Dated this 25th day of May, 2018.

12 **THE FAUX LAW GROUP**

13 **KEMP, JONES & COULTHARD, LLP**

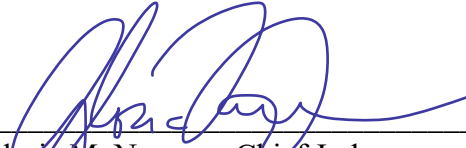
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25 **ORDER**

26 **IT IS HEREBY ORDERED** that the above Stipulation to Stay, (ECF No. 9), is  
27 **GRANTED. IT IS FURTHER ORDERED** that the parties will provide a status report of  
28 the pending FAA dispute by Tuesday, September 4, 2018, and every forty-five (45) days thereafter.

DATED this 14 day of June, 2018.

  
\_\_\_\_\_  
Gloria M. Navarro, Chief Judge  
U.S. DISTRICT COURT